

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3894 of 1986

Date of decision: 10-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHOTABHAI DAHYABHAI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Ms. P. S. Parmar for Respondents No.1, 2 & 3

None present for Respondent No. 4, 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGEMENT

The petitioner is aggrieved by the order dated 21st April, 1986 passed in revision by the Secretary (Appeals), Revenue Department, confirming the judgment and order dated 31st August, 1985 passed by the Collector, Kheda, by which the Collector had confirmed the order dated 4th April, 1985 made by the Deputy Collector, Nadiad, forfeiting the land to the State on the ground that the land which stood in the name of deceased Babaji Jinaji was a new tenure land and there was breach of condition in transferring the said land to the petitioner. The land of survey Nos.272, 290/1 and 290/3 were originally belonging to Babaji Jinaji, since deceased. The petitioner is an agriculturist and, after death of Babaji Jinaji, he is in occupation of the suit land. His name was duly mutated in the R.T.S. proceedings by the Mamlatdar, Mehmedabad, as far back as on 20th May, 1973. The said entry was duly certified by the competent authority. The petitioner has invested large amount in the said land and he was cultivating the same. He has also raised loan thereon from time to time, and at no time his possession was objected to by the Revenue Authorities, nor any proceedings were taken against the entries which were duly made in accordance with the provisions of the Land Revenue Code and the Rules.

2. The petitioner has received show cause notice dated 23rd August, 1982 issued by the Deputy Collector, Nadiad, calling upon him to show cause why the land may not be ordered to be forfeited for breach of condition. The land was stated to be new tenure land, standing in the name of Babaji Jinaji and as such transfer of the same without prior approval of the authority concerned is stated to be illegal. The petitioner submitted detailed reply to the said show cause notice contending inter alia that he is in occupation of the land since 1973, and that his name would not have been entered if the land was really new tenure land, and that his possession was authorised. It has further been contended by the petitioner that mere use of the words 'new tenure' in the revenue record does not necessarily mean that the land was unalienable. Under order dated 3rd December, 1982 the Deputy Collector, Nadiad, decided to forfeit the land in question, which was cultivated by the petitioner. The petitioner preferred appeal against the said order before the Collector, Kheda. However, the appeal was allowed and the matter was remanded to the Deputy Collector. The Deputy Collector, Nadiad, after remand, passed order against the petitioner for forfeiture of the land. The matter was taken up by the petitioner in appeal before the Collector, Kheda, who, by his order dated 4th April,

1985, confirmed the order passed by the Deputy Collector and dismissed the appeal. Then the petitioner approached the Secretary (Appeals), Revenue Department, by filing revision application under section 211 of the Land Revenue Code. The revision application also came to be dismissed under order dated 21st April, 1986. Hence this special civil application.

3. Learned counsel for the petitioner, relying on the Government Circular dated 21st September, 1985 (annexure-D) contended that all the three authorities fell in error in forfeiting the land of the petitioner on the ground that it was a new tenure land. According to him, mere mention of 'new tenure' in the revenue record was not sufficient for passing order of forfeiture of the land for breach of conditions.

4. It has next been contended that the action was taken against the petitioner by the authority after more than 9 years of the date on which the land was mutated in the name of the petitioner. This delay on the part of the authority to initiate action vitiates the same. On the other hand the learned counsel for the respondents supported the order passed by the authorities.

5. I have given my thoughtful consideration to the submissions made by the parties. It is not in dispute that in the revenue record the land in dispute has been shown to be new tenure land, but it is also not in dispute that in the revenue record it has not been mentioned that the land is inalienable and impartible or both. The Government Circular at annexure-D is one relevant material to be referred to bring the controversy to rest in the present case. The preamble to the circular is very important, which reads as under:

"It has been brought to the notice of Government that in passes of grant of land on inalienable and impartible tenure, some times Kabulayats are not available either with the grantee or in Government Offices. In such cases, the only evidence generally available is a note in Village Form VII -XII that the land is held on "new tenure". In such cases the question raised is whether land can be forfeited for breach of condition regarding inalienability or impartibility."

In the aforesaid context the matter has been considered by the Government and the aforesaid circular has been issued. The Government has insisted that entries in

village Form VI, VII and XII and other registers should be made more accurately. It has been insisted upon that instead of the words, "new tenure", conditions of grant may be described as 'inalienable', 'impartible', etc., It has further been directed that all the present entries may be substituted by new entries to this effect. So, in view of the aforesaid circular, though there was entry in the revenue record that the land in dispute was new tenure land, it was not sufficient to call for action on the part of the respondents for forfeiture of the land. In absence of any further mention of 'inalienability' or impartibility, of new tenure, how a person will come to know that the land is not transferable ?. It becomes more important, when, admittedly, neither in the Land Revenue Code nor in the Land Revenue Rules, 'new tenure' has been defined. Conditions can be attached to the grant and these conditions may be 'inalienability', 'impartibility' or both. But merely on the mention of 'new tenure' it is difficult to expect from a person to accept that the land is inalienable or impartible or both. The entry to which strong reliance has been placed to pass the order against the petitioner is of no substance and value in view of the Government Circular dated 21st September, 1985. All the three authorities have not considered the matter in the light of the Government Circular. The circular has been issued, and rightly so, so that the persons concerned may not be misled and the very purpose and object of putting conditions of inalienability or impartibility or both may not be misused. The matter would have been different if the petitioner, despite the aforesaid conditions specifically provided in the revenue record, has entered into possession of the land. But it is not the case here. The petitioner is a bona fide purchaser and the order of forfeiture of the land on the ground that it is a new tenure land and as such without prior approval of the authority concerned it could not have been transferred to the petitioner is highly arbitrary and unjust. To reach to this conclusion the matter may be looked at from another angle. Necessary entries in the revenue record in favour of the petitioner with regard to the land in dispute has been made in the year 1973 by the competent officer. At that time also it has not been noticed by the officer concerned that this land is inalienable or impartible. The petitioner is a bona fide person who entered in possession, and regarding his right, title and interest he has taken immediate steps for getting necessary correction of the entry in the revenue records. The delay in initiating action against the petitioner has assumed importance in the facts of the case, though delay in each case may not vitiate the action. But in a given

case the delay in initiation of action may certainly vitiate the action. It is settled law that an action, where no limitation is prescribed for taking thereof, should be initiated within reasonable time. What is reasonable time is not given out, but in the present case, where name of the petitioner has been entered in the revenue record, in respect of the land, way back in the year 1973, the action which has been initiated in the year 1982 cannot be said to be within reasonable time. It is not the case of the respondents that the petitioner has committed some fraud or that he got the entry fraudulently or he made some misrepresentation and got favourable orders. It is a case where the respondents have not given out any explanation, good, bad or indifferent, for delayed initiating action against the petitioner. So, the delay coupled with the fact that the land has been mutated in the name of the petitioner in the year 1973, and further that in the revenue record only the words 'new tenure' are mentioned, suggests that the action initiated against the petitioner cannot be allowed to stand. The counsel for the respondents does not dispute that new tenure lands are also alienable and partible, though with the prior approval of the competent authority. The counsel for the respondents, when asked by the court, very fairly submitted that transfer is permissible on payment of certain premium. None of the counsel for the parties is able to give out what actual amount has to be paid in the present case by way premium. But the fact remains that the land was transferable on approval of the authority. Nothing as such has been stated against the petitioner except that the transfer has been made without prior sanction of the authority. Taking into consideration the totality of the facts of this case, the order passed by the authorities below cannot be allowed to stand.

6. In the result this special civil application succeeds and the same is allowed. The orders at annexure-B, C and F are quashed and set aside. However, the Collector, Kheda, is directed to determine the amount of premium which is payable by the petitioner due to the transfer of the land in his favour within a period of three months from the date of receipt of certified copy of this judgment and order, and the petitioner shall be under obligation to pay the amount so determined, immediately on receipt of demand from the Collector. The petitioner cannot be allowed to retain the amount of premium which he has to pay for transfer of the land in question which is new tenure land. Rule made absolute in the aforesaid terms. No order as to costs.

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